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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/341,085	07/02/1999	CAREL J.L. VAN DRIEL	PHN17.110	4715

7590 06/29/2004

CORPORATE PATENT COUNSEL
U.S. PHILIPS CORPORATION
580 WHITE PLAINS ROAD
TARRYTOWN, NY 10591

EXAMINER

NGUYEN, THU HA T

ART UNIT	PAPER NUMBER
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2155

DATE MAILED: 06/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

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Technology Center 2100

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Advisory Action	Application No. 09/341,085	Applicant(s) VAN DRIEL, CAREL J.L.	
	Examiner Thu Ha T. Nguyen	Art Unit 2155	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED on 04/19/04 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. **ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).**

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attachment.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: None.

Claim(s) objected to: None.

Claim(s) rejected: 1, 3-7.

Claim(s) withdrawn from consideration: _____.

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
10. ☐ Other: _____

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Patrice Winder
PATRICE WINDER
PRIMARY EXAMINER

Attachment to Advisory Action

1. Applicant's request for reconsideration filed on April 19, 2004 have been fully considered but they are not persuasive because of the following reasons:

2. Applicant argues that Bingham does not teach "the access node switch control all of the network switching without having to know a carrier frequency allocated to a terminal coupled to a sub-network". In response to Applicant's argument, Patent office asserts that Bingham does teach or suggest the access node switch control all of the network switching without having to know a carrier frequency allocated to a terminal coupled to a sub-network as shown in figures 1, 4, col. 8, lines 7-21, col. 29, lines 29, col. 30, lines 30. ATM networks pre-provide or assign port, virtual path identifier (VPI) and virtual channel identifier (VCI) for each end terminal. When the terminal connects to the network, the access controller (16 sub 2) selects port, VPI and VCI and sends to control sub-network (15 sub 3). Therefor a control sub-network (15 sub3) does not need to know the carrier frequency of terminal device.

3. Applicant argues that Hiekali does not teach or suggest the channel cluster modules are arranged for transmitting downstream signals on one carrier frequency. In response to Applicant's argument, Patent Office asserts that Hiekali does the channel cluster modules are arranged for transmitting downstream signals on one carrier frequency as shown in figures 3-5, 8-10, abstract, col. 2 lines 5-33, col. 3 lines 3-59, col. 14 lines 20-60. ATM gateway controls plurality of network elements 302 and plurality of ports for connection to plurality of users. ATM gateway communicates to a

user via one or more channels. Hiekali system has more advantage that ATM gateway can have a choice to communicate with user on either one channel or more.

4. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the reason to combine the teaching of Hiekali and Bronstein because it would provide an efficient data communications network that has plurality of network switches that can control, manage and reconfigure the multiplexing of sub-network systems.

5. As a result, cited prior arts disclose a system for improved access network, as broadly claimed by the Applicants. Applicants clearly have still failed to identify specific claim limitations that would define a clearly patentable distinction over prior arts.

6. Therefore, the examiner asserts that cited prior arts teach or suggest the subject matter broadly recited in independent claims 1 and 7. Claims 3-6 are also rejected at least by virtue of their dependency on independent claims and by other reasons set forth in the previous office action [see paper no. 22].

7. Moreover, Examiner requested Applicants to consider and correct the objection of 112,2nd paragraph of being lack of antecedent basis as raised in the previous office action [paper no. 22].

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thu Ha Nguyen, whose telephone number is (703) 305-7447. The examiner can normally be reached Monday through Friday from 8:00 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, SPE Hosain T. Alam, can be reached at (703) 308-6662.

Any inquiry of a general nature of relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 305-9600.

The fax number for art unit 2155 is (703) 746-7239.

Thu Ha Nguyen

June 23, 2004


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